

Aboobacker Vs. District Collector

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Court : Kerala

Decided On : Jul-21-2006

Reported in : 2006(3)KLT670

Judge : K. Padmanabhan Nair, J.

Acts : [Legal Services Authorities Act, 1987](#) - Sections 21; Indian Court Fees Act, 1870 - Sections 16, 20(1) and 21; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 89; [Kerala Court Fees and Suits Valuation Act, 1959](#) - Sections 66 to 70

Appeal No. : W.P.(C) No. 5409 of 2000

Appellant : Aboobacker

Respondent : District Collector

Advocate for Def. : K.L. Joseph, Government Pleader

Advocate for Pet/Ap. : P.K. Sajeev and; P.P. Harris, Advs.

Judgement :

K. Padmanabhan Nair, J.

1. The petitioner was the plaintiff in O.S.Nos. 212/2002 and 214/2002 pending before the Sub Court, Palakkad. One Jitheshdas was the defendant in both the suits. When the suits came up for trial both the suits were referred to Lok Adalat

organised by the District Legal Services Authority, Palakkad. The matter was settled and awards were passed. Both the suits were dismissed without costs. The Lok Adalat ordered refund of full court fee paid by both parties in the plaint as well as on counter claim in both the suits as contemplated under Section 21 of the Legal Services Authorities Act (for short the Act'). Section 21 of the Legal Services Authorities Act reads as follows:

21.Award of Lok Adalat-

(1) Every award of the Lok Adalat shall be deemed to be a decree of a civil court or, as the case may be, an order of any other court and where a compromise or settlement has been arrived at, by a Lok Adalat in a case referred to it under Sub-section (1) of Section 20, the court-fee paid in such case shall be refunded in the manner provided under the Court Fees Act, 1870 (7 of 1870).

(2) Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the award.

2. In pursuance to the award the learned Sub Judge issued two refund certificates to the plaintiff stating that he is entitled to get full court fee from the District Collector, Palakkad as the matter was settled before the Lok Adalat on 11.12.2004. The petitioner produced those two certificates before the District Collector, Palakkad on 2.12.2005 for getting the refund of court fee paid. The grievance of the petitioner is that in spite of his repeated requests the District Collector is not refunding the court fee paid.

3. The District Collector has filed a statement admitting the fact that the petitioner had produced two certificates issued by the learned Sub Judge, Palakkad certifying that the plaintiff is entitled to get refund of full court fee. It was averred that on getting the request from the petitioner a bill was prepared and presented before the District Treasury, Palakkad for the refund of court fee. It was averred that the bill presented by the Revenue Divisional Officer was objected by the District Treasury Officer, Palakkad stating that the payment will be effected only on production of the cancelled court fee stamp papers. It was averred that because of the objection raised by the District Treasury Officer, Palakkad the court fee could

not be refunded so far. It was also averred that the Collector requested the learned Sub Judge, Palakkad to take steps to enable him to produce the cancelled court fee stamp papers in the two suits before the District Treasury, Palakkad and the learned Sub Judge, Palakkad had informed that since the cancelled court fee stamp papers have become part of the court records, the same could not be handed over to the District Collector to be produced before the District Treasury. It was also averred that no specific direction was issued by the Government regarding the refund of court fee in cases which are settled before the Lok Adalat and a clarification has been sought for from the Government. The District Treasury Officer, Palakkad was also directed to make alternative suggestions.

According to the District Collector there is no wilful default or laches on his part. It was also averred that similar requests were received from the defendant in the abovesaid suits and those requests were also processed and bills were prepared and presented before the District Treasury Officer. Those bills were also objected stating that the payment will be effected only on production of the cancelled court fee stamp papers. It was stated that in the absence of any specific direction from the Government and in view of the stand taken by the District Treasury Officer, the amount could not be refunded.

4. Section 21 of the Act provides that the entire court fee paid shall be refunded in the manner provided under Section 16 of the Court Fees Act, 1870. Section 16 of the Indian Court Fees Act, 1870 as stood was repealed. The present Section 16 was inserted by Act 46 of 1999 which reads as follows:

16. Refund of fee.- Where the Court refers the parties to the suit to any one of the mode of settlement of dispute referred to in Section 89 of the Code of Civil Procedure, 1908 (5 of 1908), the plaintiff shall be entitled to a certificate from the Court authorising him to receive back from the Collector, the full amount of the fee paid in respect of such plaint.

5. The provisions of Indian Court Fees Act are not applicable to State of Kerala and so far as State of Kerala is concerned refund of court fee is governed by the provisions of Kerala Court Fees and Suits Valuation Act. It is true that there is no provision in the Kerala Court Fees and Suits Valuation Act for refund of the entire

court fee. Sections 66 to 70 contained in Chapter VII of the Kerala Court Fees and Suits Valuation Act deal with refund and remissions. The provisions in the Kerala Court Fees and Suits Valuation Act provide only for refund of one half of court fee. There is no provision in the Kerala Act for refund of entire court fee when the matter is compromised. But Section 21 of the Legal Services Authorities Act which is a central Act, binds the parties to the proceedings. So the petitioner is entitled to get refund of the entire court fee paid.

6. In view of the provisions contained under Section 21 of the Legal Services Authorities Act whenever a case is settled by the Lok Adalat, the party who paid court fee is entitled to get refund of the entire court fee as provided under Section 16 of the Indian Court Fees Act. The court fee deposited before the civil court is also kept in the Government Treasury and the Treasury Officer is the custodian of that amount. Since the Treasury Officer is working under the Government he cannot take up a stand that unless the District Collector produces the cancelled court fee stamp papers he will not honour the bills. The stand taken by the Treasury Officer is illegal and not supported by any legal provision. When the Civil Court orders refund of one half of the court fee, the Civil Court is not bound to produce the cancelled court fee stamp papers before the Treasury Officer. So there is absolutely no justification in the stand taken by the Treasury Officer that he is bound to honour the bills only if the cancelled court fee stamps are produced before him.

7. In *Vasudevan v. State of Kerala* 2003 (3) KLT 993 a learned Single Judge of this Court held that the plaintiff is entitled to get full court fee. But the procedure for refunding the court fee was not considered in that decision. If there is no provision in the Kerala Court Fees and Suits Valuation Act, it is for the Government to amend the State Act and incorporate the necessary provisions enabling the District Collector to claim and disburse the court fee paid in the case. Until then the litigants cannot be put into difficulties.

In the result, the Writ Petition is disposed of in the following manner. There will be a direction to the first respondent District Collector to take steps to present the bills again before the District Treasury. The third respondent. District Treasury Officer

is also directed not to insist for the production of cancelled court fee stamp papers in this case as also in any other similar cases and honour the bill if it is otherwise in order.

A copy of this judgment will be forwarded to the Government for issuing appropriate circulars and directions in the matter and also for effecting necessary amendments in the Kerala Court Fee and Suits Valuation Act, 1959.

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